

No. 83-333

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

Office-Supreme Court, U.S.
FILED
OCT 6 1983
ALEXANDER L. STEVAS,
CLERK

C.P. CHEMICAL COMPANY, INC., Appellant,

v.

COMMISSIONER OF PUBLIC HEALTH, Appellee.

ON APPEAL FROM THE MASSACHUSETTS
SUPREME JUDICIAL COURT

BRIEF IN OPPOSITION TO MOTION TO DISMISS

Joseph Semo*
Michael S. Marcus
Glenn M. Engelmann
Clifford J. Zatz
Jeffrey K. Sherwood
SEIFMAN, SEMO & SLEVIN, P.C.
1000 Potomac Street, N.W.
Suite 204
Washington, D.C. 20007
(202) 298-8686
*Counsel of Record

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

C.P. CHEMICAL COMPANY, INC., Appellant,

v.

COMMISSIONER OF PUBLIC HEALTH, Appellee.

ON APPEAL FROM THE MASSACHUSETTS
SUPREME JUDICIAL COURT

BRIEF IN OPPOSITION TO MOTION TO DISMISS

Appellant C.P. Chemical Company, Inc. ("C.P."), by counsel, submits this brief in opposition to the Commonwealth of Massachusetts' Motion to Dismiss C.P.'s Appeal From the Supreme Judicial Court of Massachusetts ("the Motion"). In its Brief in Opposition, C.P. responds to only one point raised by the Massachusetts Commissioner of Public Health ("the Commissioner") in the Motion: that

artificial persons do not have due process rights under the Due Process Clause of the Fourteenth Amendment. See Motion at 13.

In the Motion, the Commissioner contends that C.P. "raises an issue that has not been taken seriously for over a century," id.: that a corporation has protectible liberty interests under the Due Process Clause to pursue the business of its choice. Contrary to this assertion, that a corporation is not protected by the Due Process Clause, it "has been settled for almost a century that corporations are persons within the meaning of the Fourteenth Amendment." First National Bank of Boston v. Bellotti, 435 U.S. 765, 780 n. 15 (1978). In Bellotti, this Court protected the liberty interests of a corporation. The Commissioner's argument in the Motion is therefore wrong in averring that a corporation has no protectible liberty interests under the Fourteenth Amendment. If for no other reason, then, this Court ought to grant C.P.'s appeal both to clarify its decision in Bellotti and to confirm the existence and scope of a corporation's due process rights.

Using decisions that are inapposite and taken out of context, the Commissioner mischaracterizes C.P.'s argument as one of substantive, as opposed to procedural, due process and imputes to C.P. an intention to prevent states

from establishing business regulations. C.P. is not asking in this case that states be put in a "strait jacket" when they attempt to regulate businesses and C.P. does not challenge a state's power to pass substantive regulations conditioning or restricting business activity, even if those substantive regulations sometimes result in a prohibition. Any reference by the Commissioner in the Motion to Nebbia v. New York, 291 U.S. 505 (1934), or other substantive due process cases is therefore entirely inappropriate. See Motion at 14.

In the context of this argument, C.P. presents a constitutional issue of procedural due process: can C.P. be denied its livelihood by Massachusetts without a meaningful opportunity to be heard?

Respectfully submitted,
C.P. CHEMICAL CO., INC.

Joseph Semo*
Michael S. Marcus
Glenn M. Engelmann
Clifford J. Zatz
Jeffrey K. Sherwood
SEIFMAN, SEMO & SLEVIN, P.C.
1000 Potomac Street, N.W.
Suite 204
Washington, D.C. 20007
(202) 298-8686
Counsel for Appellant
*Counsel of Record